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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PRESTIGE AUTOTECH CORPORATION,

Plaintiff and Appellant,

v.

WUXI CHENHWAT ALMATECH CO.,

Defendant and Respondent.

E067138

(Super.Ct.No. CIVRS1302108)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gilbert G. Ochoa, Judge. Affirmed.

Snell & Wilmer, Todd E. Lundell, Jeffrey M. Singletary and Jing Hua for Plaintiff and Appellant.

Law Offices of Justin J. Shrenger and Justin J. Shrenger for Defendant and Respondent.

I. INTRODUCTION

Plaintiff and appellant Prestige Autotech Corporation (Prestige) appeals from the trial court's order setting aside the default judgment entered against defendant and respondent Wuxi Chenhwat Almatech Co. (Wuxi). Prestige contends that the trial court exceeded the scope of its equitable power to set aside the default because Wuxi failed to make the showing required to justify such relief. We disagree, and affirm the trial court's order.

II. FACTS AND PROCEDURAL BACKGROUND

This is the second appeal in this matter from a trial court order setting aside the default judgment against Wuxi.

Prestige filed a complaint alleging various causes of action arising out of a soured commercial relationship with Wuxi. Prestige alleged it is located in Chino, California, and is a "leading designer, supplier and distributor of custom after-market custom [*sic*] wheels." Wuxi is alleged to be one of Prestige's manufacturers, based in China.

Prestige served process by personally serving a copy of the summons and complaint on a Wuxi employee who was visiting Prestige's California corporate headquarters. Prestige claims it served process this way because a letter on Wuxi stationary and to which the company seal had been affixed (though the document was not signed by any individual) had been sent to Prestige by email and express mail, authorizing the Wuxi employee to (among other things) accept service of process on behalf of Wuxi.

Wuxi did not respond to the complaint, its default was entered, and Prestige obtained a default judgment of $17,300,000, plus $1,219,719 in prejudgment interest, with postjudgment interest to accrue at 10 percent per annum.

In its first motion to set aside the default judgment, Wuxi asserted that its chairman of the board, Jiadong Wu, had fraudulently orchestrated the events leading to the default and default judgment being entered against Wuxi, for the benefit of his brother, an owner and founder of Prestige. Specifically, according to Wuxi, Jiadong Wu arranged for the Wuxi employee's trip to California on the pretext of a technical meeting. Wuxi describes the employee as an engineer, without any management-level responsibilities. The employee was given a package of documents that he did not understand, including the summons and complaint; Jiadong Wu instructed the employee to give the documents to Jiadong Wu's assistant. When the assistant and other lower-level Wuxi managers asked Jiadong Wu what to do with the documents, Jiadong Wu told them to do nothing and wait for further instructions, which were never given.

Wuxi offered documents showing involuntary bankruptcy proceedings were initiated against Wuxi in China, resulting in Jiadong Wu's removal and the appointment of an administrator to take over the company's affairs. An audit conducted by the administrator resulted in a report finding that Prestige owed Wuxi over $15.5 million.

The trial court granted Wuxi's first motion to set aside the default judgment under Code of Civil Procedure[1] section 473, subdivision (b). We reversed that order in *Prestige*

[1] Further undesignated statutory references are to the Code of Civil Procedure.

Autotech Corporation v. Wuxi Chenhwat Almatech Co. (March 22, 2016, E061541) [nonpub. opn.] (*Prestige I*).

In *Prestige I*, we held that the trial court erred by relying on section 473, subdivision (b), in setting aside the default judgment, finding that Wuxi's motion was both untimely and procedurally deficient under that subdivision. (*Prestige I, supra,* E061541.) Wuxi's motion was untimely because it was filed more than six months after entry of default, and it was deficient for failing to attach an answer or other pleading. (*Ibid.*) We remanded the matter "for further proceedings, including a determination of whether the default and default judgment entered against Wuxi should be set aside pursuant to section 473, subdivision (d), or pursuant to the court's inherent equitable power." (*Ibid*.)

On remand, the trial court granted Wuxi's motion to set aside the default judgment, this time relying on its inherent equitable powers. The trial court found that "Wuxi has presented sufficient evidence showing that its failure to answer plaintiff's complaint was the result of the actions of its Chairman of the Board that violated his duty to the company, that Wuxi has a good defense to the action because Prestige owes it significant amounts of money, and that it acted diligently after learning of the default and default judgment."

III. DISCUSSION

Prestige argues that the trial court exceeded the scope of its equitable power because Wuxi "failed to meet its burden to prove the three elements required for relief." We reject Prestige's argument.

A. *Applicable Law and Standard of Review*

Under section 473, subdivision (b), a party may seek relief from a default judgment due to "mistake, inadvertence, surprise, or excusable neglect" within "a reasonable time," but not more than six months after entry of default or default judgment. (§ 473, subd. (b).) In *Prestige I*, we rejected section 473, subdivision (b), as a ground for setting aside the judgment. (*Prestige I*, *supra*, E061541.)

However, "[a]fter six months from entry of default, a trial court may still vacate a default on equitable grounds even if statutory relief is unavailable." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) When, as here, a default judgment has been entered, equitable relief may be given only in exceptional circumstances. (*Ibid.*) Our Supreme Court has recognized a three-part test to determine whether equitable relief may be granted: First, the party seeking relief must show a meritorious defense; second, that party must identify an excuse which the court finds to be satisfactory for the failure to present the defense; and, finally, that party must have acted diligently to set aside the default once discovered. (*Id.* at p. 982.)

We review rulings granting relief from judgment on equitable grounds for abuse of discretion. (*Parage v. Couedel* (1997) 60 Cal.App.4th 1037, 1041.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.) The burden of showing an abuse of discretion

rests on the appellant. (*Broadway Fed. etc. Loan Assoc. v. Howard* (1955) 133 Cal.App.2d 382, 401.)

B. *Wuxi Adequately Showed a Meritorious Defense*

The trial court found that Wuxi had demonstrated that it had a meritorious defense based on declarations and supporting evidence showing Prestige "is indebted to Wuxi in the approximate amount of $15,517,004.56," and that Jiadong Wu "permitted Prestige to run up an enormous debt to Wuxi." Prestige has not argued that the trial court's findings of fact lack the support of substantial evidence. It follows that Wuxi has adequately demonstrated a meritorious defense to Prestige's claims, having shown that "if the judgment were set aside and the proceedings were reopened, a different result would probably follow." (*Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 554.)

In support of the contrary conclusion, Prestige argues that Wuxi must make a showing that it has a complete defense to Prestige's claims, not just separate claims that would offset the damages claimed by Prestige. We are not persuaded. Prestige has alleged that Wuxi breached certain manufacturing contracts, causing Prestige to incur damages. If Wuxi can prove at trial that in fact Prestige owes Wuxi over $15 million on those contracts, the resulting judgment will be different from the default judgment obtained by Prestige, even if Prestige is still able to establish damages of over $17 million arising from its other claims. Such a "different result" is adequate to demonstrate a meritorious defense, as that phrase is used in the present context. (*Bennett, supra*, 47 Cal.2d at p. 554.)

Prestige cites *Perrin v. Countryman* (1953) 115 Cal.App.2d 593 for the proposition that "a claim for an offset is not a meritorious defense under California law." *Perrin* does not support that proposition, and indeed suggests precisely the opposite. In *Perrin*, the trial court denied the defendant's motion to set aside a default judgment even though the defendant had offered to file a proposed cross-complaint alleging damages that would offset the damages awarded in the default judgment on the plaintiffs' claims. (*Id.* at p. 596.) The Court of Appeal affirmed, reasoning that the trial court "might well have believed" that the cross-complaint lacked merit and was asserted in bad faith, as the plaintiffs contended. (*Ibid.*) But the Court of Appeal's reasoning also implies that if the defendant's claim of an offsetting debt had *not* lacked merit and *had* been made in good faith, it would have constituted an appropriate basis for relief from the default judgment. In this case, the trial court credited Wuxi's claim of an offsetting debt as being asserted in good faith, and Prestige has not challenged the trial court's finding of prima facie evidence of the claim's merit.

Prestige's reliance on *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295 is also misplaced. Prestige emphasizes the Court of Appeal's comment, made in the course of finding relief from default to be inappropriate, that the defendant had not "defeated all of the claims that were capable of supporting the award of damages." (*Id.* at p. 316.) In Prestige's view, the quoted language means Wuxi cannot obtain relief from default absent a meritorious defense to each of Prestige's asserted claims, regardless of any offsetting claims Wuxi may have. Not so. In *Gibble*, the defendant had "belatedly raised a number of colorable defenses to some of [the plaintiff's] claims." (*Id.* at p. 316.)

The plaintiff, however, had asserted a number of different legal theories in the alternative, so evidence or argument that would defeat some of those theories did not equate to a showing of a meritorious defense that would lead to a final judgment different from the one obtained by default. (*Id.* at pp. 316-317.) Such reasoning has no application here, and Prestige's interpretation of *Gibble*, which depends on taking an isolated phrase out of context, is unpersuasive.

Prestige further argues that, even if offsetting claims can demonstrate a meritorious defense, Wuxi has failed to do so because its claimed offset of $15 million is less than the default judgment of over $17 million plus interest. Prestige suggests that *Smith v. Busniewski* (1952) 115 Cal.App.2d 124 stands for the proposition that only a "complete defense" is adequate to justify relief from default. Again, however, this argument rests on taking isolated language out of context. In *Smith*, the Court of Appeal commented that the defense proposed by the defendant seeking relief from default, "if proved, would constitute a complete defense" to the claims asserted by the plaintiff. (*Id.* at p. 129.) That is not the same as holding that *only* a complete defense is adequate to justify relief from a default judgment.

We conclude Prestige has not demonstrated that the trial court abused its discretion in finding that Wuxi had demonstrated a meritorious defense, that is, that "if the judgment were set aside and the proceedings were reopened, a different result would probably follow." (*Bennett*, *supra*, 47 Cal.2d at p. 554.)

C. *Wuxi Demonstrated a Satisfactory Excuse for Its Failure to Present a Defense*

The trial court found that Wuxi had shown a satisfactory excuse for failing to present a defense, namely, that "its failure to answer plaintiff's complaint was the result of the actions of its [Wuxi's] Chairman of the Board that violated his duty to the company . . . ." Prestige contends that this finding lacks the support of substantial evidence and, even if true, does not constitute an appropriate basis to relieve Wuxi from default. We find no abuse of discretion in the trial court's analysis.

First, some evidence supports Wuxi's contention that Jiadong Wu fraudulently orchestrated the events leading to the default and default judgment being entered against Wuxi for the benefit of his brother, an owner and founder of Prestige. The service here occurred in a highly unusual manner, wherein an unsigned document informed Prestige it could serve an engineer-employee visiting the United States, and then was followed by (according to Wuxi's evidence) Jiadong Wu instructing employees to do nothing in response to the service. Even if, as Prestige contends, there is no direct evidence of Prestige's involvement in this scheme, the circumstances are such that its involvement is reasonably inferred, even if other inferences are also possible. As we noted in *Prestige I*, Prestige's arguments to the contrary only demonstrate the existence of factual disputes between the parties, not the absence of any evidence in support of Wuxi's version of events. (*Prestige I, supra*, E061541.) We therefore will not disturb the trial court's factual finding on the issue. (*Shamblin v. Brattain*, *supra*, 44 Cal.3d at pp. 478-479.)

Prestige contends that, even accepting Wuxi's version of events, there is no evidence of any "*extrinsic* circumstances" justifying its failure to defend the lawsuit. In

Prestige's view, the circumstance that Wuxi's own representative breached his fiduciary duty to Wuxi, and that Wuxi lacked "'sufficient internal procedures'" to ensure that the summons and complaint were routed to the proper personnel despite that breach of fiduciary duty, constitute "intrinsic" failures, insufficient to warrant relief from default. But this line of argument depends on a misunderstanding of how the term "extrinsic" is used in the present circumstance: "The term 'extrinsic' refers to matters outside of the issues framed by the pleadings, or the issues adjudicated." (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738.) There is no question that Jiadong Wu's orchestration of Wuxi's default is a matter "outside of the issues framed by the pleadings, or the issues adjudicated." (*Ibid.*) Furthermore, the "essence of extrinsic fraud is one party's preventing the other from having his day in court." (*City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067.) There is ample evidence in the record to reasonably conclude that Wuxi was fraudulently prevented from having its day in court, and that, although Jiadong Wu was an officer of Wuxi, he was acting on Prestige's behalf when he orchestrated Wuxi's default. The trial court did not act beyond the bounds of reason in finding Wuxi had demonstrated a satisfactory excuse for its failure to present a defense prior to entry of default and default judgment.

Prestige notes that, in the course of its written explanation of its ruling, the trial court remarked that Wuxi had "presented sufficient evidence showing good cause for [its] failure to answer," though it used different language, quoted above, in stating its conclusions. Prestige argues that "good cause" is not the appropriate standard for granting equitable relief. We disagree. There is no substantive difference between a

finding that a party has shown good cause for relief from default and a finding that the party has "articulate[d] a satisfactory excuse for not presenting a defense . . . ." (*Rappleyea v. Campbell*, *supra*, 8 Cal.4th at p. 982.) Particularly in the context of the trial court's exercise of its inherent equitable power—rather than, say, the application of a standard set by statute—such quibbles over phrasing have little persuasive force.

Prestige has failed to demonstrate a trial court abuse of discretion in finding that Wuxi had established a satisfactory excuse for not presenting a defense.

D. *Wuxi Made an Adequate Showing of Diligence*

Prestige argues that the trial court abused its discretion in finding that Wuxi acted diligently in seeking to set aside the default and default judgment. We find no error.

Wuxi supported its request for relief from default with a declaration by its attorney, who declared that he was "first informed of the possibility of retention in the fourth quarter of 2013," but was not "formally retained until January 24, 2014." Wuxi's attorney further declared that he "received the relevant documents shortly thereafter," and within one week scheduled the first available date for hearing a motion for relief from default. The trial court further noted that Wuxi is a "foreign company that needed to obtain California counsel to seek to vacate the default judgment," and that Wuxi had been "placed in bankruptcy proceedings in China on August 22, 2013, and the creditors committee did not approve retention of attorneys to defend it until December 23, 2013." We do not find it to be beyond the bounds of reason for the trial court to have concluded on the above facts that Wuxi exercised reasonable diligence in seeking to set aside the default and default judgment.

Prestige emphasizes the trial court's observation that "Wuxi does not identify when it learned of the default or Wu's alleged extrinsic fraud in preventing Wuxi from responding to the suit." Prestige asserts that "if Wuxi learned of its default soon after it was entered in July 2013 and did not act on that information until Wuxi's creditor's committee approved the retention of attorneys in December 2013, that delay would show a decided lack of diligence." We disagree with Prestige's conclusion. As discussed above, there is evidence, albeit disputed, that Jiadong Wu fraudulently prevented Wuxi from responding to the lawsuit, acting not in his role as chairman of the board and legal representative of Wuxi, but rather for the benefit of Prestige. The trial court acted within the bounds of reason to credit that evidence, at least for present purposes, and to find the bankruptcy administrator exercised reasonable diligence to begin to attempt to undo the effects of the fraud once involuntary bankruptcy removed Wuxi from Jiadong Wu's control in August 2013.

The lone authority cited by Prestige on the issue of diligence does not require us to reach a different conclusion. In *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488 (*Cruz*), the defendant entity offered "improper handling of the matter within the corporation's office" as an excuse for failure to respond to the lawsuit, contending that the responsible individuals within the entity mistakenly did not receive the summons and complaint when it was served by mail. (*Id.* at p. 506.) The Court of Appeal found that excuse unsatisfactory, and it further noted that even after those responsible individuals learned of the lawsuit, they failed to act diligently to set aside the default. (*Ibid.*)

We have no quarrel with the reasoning of the Court of Appeal in *Cruz*, given the record before it. But the facts of the present case are different. Here, there is evidence that the failure was not caused by Wuxi's internal mail routing procedures, but by fraud by a responsible individual for the benefit of Prestige, initially preventing Wuxi from responding to Prestige's lawsuit. The trial court reasonably focused its analysis of diligence on the period after Wuxi was removed from Jiadong Wu's control.

We conclude that the trial court did not abuse its discretion in determining that, under the circumstances, Wuxi acted with reasonable diligence to set aside the default.

IV. DISPOSITION

The trial court's order granting Wuxi's motion for relief from default is affirmed. Wuxi is awarded its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAPHAEL
J.

We concur:

MILLER
Acting P. J.

CODRINGTON
J.